

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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November 27, 2006

Memo To Counsel Re: Teresa James, et al. v. City of Frederick, et al.
Civil No. JFM-06-555

Dear Counsel:

I have reviewed the memoranda submitted in connection with the motion to dismiss filed by the Estate of William Burton. The motion will be granted.

First, plaintiff's state law claims are barred by virtue of the fact that plaintiff failed to provide notice of her claims to Burton or his estate within 180 days of the claimed injury as required by §5-404(a) of the Courts & Judicial Proceedings Article of the Maryland Code. Plaintiffs have not shown good cause for providing such notice. The notice they did provide to the Director of Elementary Schools for Frederick County self evidently was not notice to Burton or his estate, and ignorance of the notice requirement has been held not to constitute good cause for failing to give notice. *See, e.g., Williams v. Montgomery County*, 123 Md. App. 119, 133-34, 716 A.2d 1100, 1107 (1998). Moreover, here the failure to provide notice was prejudicial in that Burton has now died without being given the opportunity to provide his version of the events.

Second, the claims of the parents of Damien James and the United States are barred by limitations. The events upon which this action is based occurred more than three years before the filing of the amended complaint (in which the Estate of William Burton was first named as the defendant), and nothing in the record suggests that the Estate of William Burton had reason to know that he would have been sued within the 120 day period provided by Fed. R. Civ. P. 4(m) for service as required by Fed. R. Civ. P. 15(c)(3).

Third, the "Estate of William Burton" is not a legal entity capable of being sued. Maryland law contemplates that a personal representative must be appointed in order for a claim against an estate to be pursued. *See* Maryland Code Ann., Estates and Trusts Art., §§8-101 and 8-104. Plaintiffs have taken no action to have a personal representative of William Burton's Estate appointed.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge